Exhibit 7

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United States District Court
District of Massachusetts

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The following transaction was received from Bowler, Marianne entered on 11/2/2004 at 3:52 PM EST and filed on 11/2/2004

Case Name: Citizens for Consume, et al v. Abbott Laboratories,, et al
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Docket Text:
Judge Marianne B. Bowler: Electronic ORDER entered granting in part and denying in part [996] Motion to Compel to the extent set forth in the ruling on Docket Entry # 1068. Electronic Order denying [1068] nonparties' Motion to Quash, consistent with the reasoning employed by the court at the March 8, 2004 status conference. The nonparties are ordered to appear at the noticed depositions which, absent an agreement among all participating entities, shall be taken within the next 30 days. The subject matter shall be item numbers 1-3, 5-7, 11-13, 16-17 and 20-21 as set forth in the list attached to the August 23, 2004 letter (Docket Entry # 170, Ex. F) which reiterates topics encompassed in the list of documents to be produced attached to the re-noticed deposition subpoenas (Docket Entry # 1018, Ex. E-G). As agreed to in open court by defendants, they shall pay the reasonable costs of transportation and related expenses, reasonable attorney's fees and lost income incurred by t
witnesses. Electronic Order denying Motion to Compel [1090], in accordance with the prior ruling of Judge Saris on April 26, 2004 (Docket Entry # 818), inasmuch as the prior motion (Docket Entry # 632) requested an accounting of all communications between defendants and putative class members and that motion was denied. (Bowler, Marianne)

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Exhibit 8

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Docket No. 01-12257-PBS

In re: Pharmaceutical Industry Wholesale Price Litigation

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE MARIANNE B. BOWLER
UNITED STATES MAGISTRATE JUDGE
HELD ON JANUARY 27, 2005

APPEARANCES:

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P R O C E E D I N G S

THE CLERK: Today is Thursday, January 27, 2005. The case of Citizens for Consumer Justice, et al v. Private Laboratories, et al, Criminal Action No. 01-12257 will now be heard before this Court. Will counsel please identify themselves for the record?

MR. MANGI: Your Honor, Adil Mangi from Patterson, Belknap, Webb & Tyler for defendants. I'll be arguing the motion to compel Health Net.

THE COURT: Thank you.

MS. CICALA: Good morning, your Honor. Joanne Cicala from Kirby McInerny & Squire, for plaintiff, the County of Suffolk, here on the discovery motion.

MR. McGINTY: Good morning, your Honor. Kevin McGinty from Mintz Levin for Health Net, respondent to the motion to compel.

MR. SELFRIDGE: Good morning, your Honor. Lance Selfridge from Lewis Brisbois Bisgard & Smith in Los Angeles also here on behalf of Health Net. I understand that Mr. McGinty has a motion for pro hac vice admission for me.

THE COURT: Okay. And that motion will be allowed.

MR. SELFRIDGE: Thank you, your Honor.

THE COURT: Has it been filed or are you just--

MR. McGINTY: I have it here, your Honor, with the filing fee as well.

THE COURT: Okay. Oh, we always want the money.

MR. McGINTY: Yes. I've learned from said experience so, I will hand it up now.

THE COURT: All right, that's fine.

MR. SELVICH: Thank you, your Honor.

THE COURT: You're welcome.

MR. CHRISTOFFERSON: Good morning, your Honor. Eric Christofferson from Ropes & Gray, on behalf of Schering-Plough Corporation.

THE COURT: Thank you, very much.

MR. NOTARGIACOMO: Good morning, your Honor. Edward Notargiacomo from Hagens, Berman on behalf of the Class MDL plaintiffs. I don't have any particular motion. I'm just here in case there are questions that need to be answered.

THE COURT: Mr. DeMarco, do you want to be noted on the record.

MR. DeMARCO: And, your Honor, I am Michael DeMarco as you know, and I'm here with my colleague Jim Muehlberger.

MR. MUEHLBERGER: Good morning, your Honor.

THE COURT: Good morning.

MR. DeMARCO: I'm with Kirckpatrick & Lockhart, Nicholson Graham. And Jim is with Shook, Hardy & Bacon from Kansas City and he represents Aventis, an interested party, the defendant in the class action.

THE COURT: All right. Well, we'll take the two, the

motions in the order in which they were filed. So the first is docket entry number 1175, which is defendants' motion to compel third party Health Net to produce with opposition.

MR. MANGI: Thank you, your Honor. As your Honor is aware, Judge Saris allowed the defendants to proceed with discovery of a sample of health insurers in the industry. Health Net is a key part of that industry sample. Primarily because of their geographical reach, they operate on both coasts, both coasts, but also because they have an internal PBF which renders them particularly of interest to defendants. This motion is before your Honor on two specific issues.

First of all, Health Net has produced about half a box of documents. That came after about a year worth of negotiation on the subpoena and the scope of production. But all of the documents that were produced were redacted. In fact, they were redacted of all terms that would be useful to defendants in this case. All reimbursement methodologies were redacted. All dispensing fees or administration fees were redacted. The same for financial terms, even the names of contracting parties, - (inaudible #11:04:07) - were essentially shell contracts, worthless paper or templates. That's the first and the primary issue for this motion.

The second is there were certain very limited documents that were identified by Health Net's witnesses at depositions as being central to this case. We sought their

production after the deposition, and again these were very specific categories of documents, and Health Net has refused to produce them without giving any reason for that refusal. Now, on the issue of redactions, Health Net's only reason for not producing these documents in their unredacted form, and again it's half a box so far, is that they have confidential information and Health Net's taken that position despite the fact that their protective order is in place. So what Health Net is seeking here is unique status in this litigation. All the other health plans that are part of the industry sample have produced their documents in unredacted form providing all of this information, the methodology, the dispensing fees, and so on, the defendants seek. Health Net claims that they should be given unique status and allowed to keep their information confidential and that the protective order is not sufficient.

Now, I will point out that Judge Saris in CMO 10 already made a ruling on the issue of redaction and said in that order, which is appended to our the papers, the redaction should only be allowed on the grounds of privilege. Now, that order was by its terms addressed to parties, but the logic is equally applicable here, given that the same protective orders protect the interest of third parties as parties. Now, Health Net in their papers have made a lot of human cry about the relevance of these methodologies. We've discussed that with them on numerous occasions. We've even sent them letters, many

letters, expressing why the information is relevant, but I'll address it here very briefly by giving just a few examples. As your Honor is aware, the plaintiff's in the MDL, are now focused on a theory performed by the expert Dr. Hartman which pertains to the expectations of pairs alleging a common expectation of cost classes of trade. The only way the defendants can test that theory is by reference to the methodologies that are actually being used. If they're different methodologies, different classes of trade or even different entities within classes of trade, defeats those common expectations. Similarly, another issue that's going to be critical to the merits is the defendant's position that these contracts have to be looked at on an overall basis. You have to look at the bundle of services that are being provided and the bundle of payments that's being given. You can't compare the bundle if you don't know what the terms are. You can't compare methodology and dispensing fee and see their interrelationship of all the terms, if you don't know what any of those terms are. And there are numerous other factors that show the relevance of this. As your Honor's aware, we've put in experts' submissions that have scattered thoughts showing different reimbursements for different drugs. Health Net has testified about different methodologies they use. Fee schedules, for example, you can only assess them if you know what they're based on. So that information is simply central

to our claims.

Now, the only law that Health Net has cited for their position which we consider unique is the Vitamins case from the Southern District of Ohio, but as we point out in our reply papers that that case has no application here. The court there expressed concern over confidentiality, but that was because the party there that was seeking the discovery was a direct competitor of the party that was making production. Here, there is no such relationship between the defendant manufacturers and Health Net. Moreover, the issue of confidentiality was not dispositive in the Vitamins case. The court expressly said so, and in fact, invited the party to reserve the subpoena. They didn't rule on the subpoena in Vitamins because it was premature. There were motions to dismiss pending. The court said if you win the motion to dismiss, the issue goes away, so let's wait and see what happens there. So again, they're seeking entirely unique status here.

Secondly, that issue of redactions also feeds into claims data. We've sought claims data from Health Net as we had from numerous insurers. We've already used a lot of that claims data, and with all health insurers, we've offered to pay for it. Health Net here raises a few additional arguments which we submit are just red herrings. They raise the HIPA statute. There is a precise HIPA regulation on point that

allows disclosure where there's a subpoena and a HIPA compliant protective order in place. The defendant's haven't even stood on that. We've said okay, you can redact or rather you can replace patient identifying information with dummy numbers as long as they're consistent so we can carry out our analysis. So we don't care what the names of the individual patients are. We just want to be able to relate them to the claims so we can study what was paid in relation to specific--

THE COURT: What's wrong with doing that, counsel?

MR. McGINTY: In fact, your Honor, if it is possible to run some kind of algorithm as they suggest that would scramble the patient identifiable information, I expect that it's probably not going to be a problem. As counsel indicated, the problem really comes with embedded in claims data is the confidential business information concerning dollar value of reimbursement terms.

THE COURT: Okay, so the--

MR. MANGI: Your Honor, the only thing I'll add on claims data is that Health Net, in two letters that are before your Honor have already agreed that the scrambled algorithm which we've used with other insurers already and it works fine, will satisfy all of their patient confidentiality concerns, so that issue we submit is straightforward.

Now, the other aspect of this motion pertains to documents identified at deposition. After the depositions, we

sent a letter to Health Net on October 15, 2004 identifying the specific documents that the witnesses talked about. These again are very specific. Some of them are as a simple as missing pages with bates numbers to be provided. Somehow, they dropped out of the production. Please give them to us, have nothing in response despite numerous letters. Some of them are slightly more substantive. For example, in narrowing our production, and as I mentioned, Health Net's only produced half a box because we narrowed it so extensively. We only sought representative samples of contracts rather than all contracts. We told Health Net that we would test the representative nature of the sample at depositions in relation to, for example, the retail pharmacy contracts between Health Net or the internal PBM and the pharmacies. Health Net gave us one 2004 template contending it was representative of all their contracts since 1991. Other health plans, some have produced five, some have produced five boxes. One is rarely going to do. We asked the witness at deposition is this representative? He said, no, it's not. Now, their contracts are again very specific. There's a mail order contract that was referenced. We asked for it. They mentioned the production of documents in a related AWP litigation, already produced. We asked for those.

THE COURT: Just one second. Mr. Keefe, did you lose something?

MR. KEEFE: I think I misplaced a hat somewhere, your

Honor.

THE COURT: What's it look like?

MR. KEEFE: It's just a black hat.

THE COURT: If we find it, we'll know who it belongs to.

MR. KEEFE: Your Honor, in my condition, I need it. It must be out in the hall. Thank you, Judge.

MR. MANGI: So as I was saying your Honor, these are very specific documents that we've asked for. There's no burden issue, but yet, Health Net has refused to produce them and has provided no reason for their refusal to do so. They're specific additional issues raised in Health Net's papers but I'll address them if counsel raises them today.

Thank you, your Honor.

THE COURT: All right. Your brother makes it sound very simple.

MR. McGINTY: It always is at first look. One thing that counsel for the defendants I think has omitted to discuss is the significant threshold issue about whether this Court even has jurisdiction over this particular subpoena. As noted in the papers, admitted by the defendants, there is a conflict between various courts as to the scope of 28 U.S.C. Section 1407 and whether or not that empowers this court as the transferee court in an MBL proceeding to consider manners concerning the enforcement of a subpoena under Rule 45. It's

undisputed that Rule 45 says that motions for enforcement or motions to quash any motion concerning the scope of a Rule 45 subpoena, that the power there is best to be heard by the court that issued the subpoena, in this case, the court in California, and what the defendants argues is that Section 1407 by virtue of its consolidation procedures gives this court power that essentially trumps Rule 45, and they cite a couple of cases for that proposition. We cite the Visics (ph) case, which says that Rule 45 controls, and we submit to you that the case that we cite is probably better authority because it comports with sound statutory construction principles. The provision at issue in Section 1407 is this, there is a portion of that statute which says that the judge or judges to whom MDL actions are assigned, may assign the powers of the district judge in any district for the purpose of conducting pretrial depositions in such coordinated or consolidated pretrial proceedings. Now, that's very clean language. It only refers to depositions. That's the only discovery matter specifically, you know, assigned to the transferee court, and the most basic cannon of statutory construction says that you read a statute the way it's written. Congress is presumed to know the meaning of the, of the terms of the statute. It, it's not a stretch to say that Congress knows what the term deposition means. Congress is responsible for the content of Rules of Civil Procedure, so they're presumed to know what--

THE COURT: And a lot of other things.

MR. McGINTY: But they presume to know what Rule 45 says.

THE COURT: Including the fact that we don't get a raise.

MR. McGINTY: That too, unfortunately. The mission to refer to matters of, in depositions can only be taken to be purposeful, and, and the way that the authority say about the defendants gets around that is they appeal to some general policy argument concerning the nature of a 1407 proceeding saying well, it says that coordinated or consolidated pretrial proceedings shall be conducted by a judge or judge to whom such actions are assigned. Gee, you know, that's if there's a policy for them to get everything, but if that's true, why have the separate reference to depositions at all. If that consolidation language is good enough to give this Court control over Rule 45 matters, you wouldn't need to refer to depositions at all. So the question is why--

THE COURT: Well, does it not refer to depositions that can be going on in another district where disputes arise?

MR. McGINTY: That's, I think that's the purpose, your Honor, is that Rule 30 of the Rules of Civil Procedure has very specific provisions referenced in the Visics' case, 30(B)(4). It says that any time during a deposition on motion of a party or of the deponent and upon a showing of, you know,

that the examination is being conducted in bad faith, et cetera, et cetera, et cetera, the court in which the action is pending or the court in the district where the deposition is being taken may order the officer conducting the examination to cease forthwith or may limit the scope or manner or whatever. What this essentially says is that depositions being a special case where stuff happens, if you need to suspend and get a ruling, Section 1407 says you go to the transferee court. That's the purpose of having a specific reference to depositions in Section 1407. Otherwise, there's no reference to any other kind of discovery, Rule 45 should control, and as a third party, not a party to the case, Health Net is the third party stranger to this case, resident out in California producing documents in site two within California should be subject to the jurisdiction of the California court. And it makes sense for a number of reasons, in particular, for issues that had been raised in this motion although I think have been--

THE COURT: Well, it makes no sense in terms of the fact that the judge in California knows absolutely nothing about the case.

MR. McGINTY: Well, I think that's the, that's the--

THE COURT: Particularly in a complex case.

MR. McGINTY: Well, that's always going to be the case, your Honor. I mean cases can be incredibly complex

without being an MDL proceeding, yet Rule 45 nonetheless gives the local court the authority to determine the propriety of the discovery that's being sought.

THE COURT: Okay, I'll hear from your brother just on this issue of jurisdiction.

MR. MANGI: Your Honor, I admire my learned friend's efforts to create an issue on the jurisdictional point, but it's one that doesn't exist. The case law is discussed extensively in our reply papers, and I'm happy to hand up the pages if your Honor would like them. There are numerous cases that address this precise issue. It's come up many times and all of them uniformly hold that the MDL court has jurisdiction, and, in fact, exclusive jurisdiction over these matters. What's more, they go into the logic for that as your Honor just pointed out, judicial economy demands that the judge most familiar with the litigation hear these disputes. The district for example pointed to that precise factor in the Boise case. Similarly, the, Poe case in the District of DC said it would make no sense if depositions were heard in one place, documents in another. All these cases, and there are plenty more, there's Factor A from the Northern District of Illinois, Sunrise Securities from the Eastern District of Pennsylvania, Dupont Plaza from Puerto Rico, even Wright & Miller have spoken to this point. All of them uniformly stand--

THE COURT: Dupont Plaza is a First Circuit Case, so

yes.

MR. MANGI: -- that the MDL court has jurisdiction. Now, the Visics case that, that my learned friend relies on, that court explicitly distinguished this situation. They applied their ruling only to cases where the docket, where the subpoena was for documents only. They expressly distinguished cases where the subpoena was for documents and a deposition, which is what we have here. So Visics, even in its own terms doesn't apply and what's more, Visics was expressly rejected in Poe, which is the leading case and it's never been cited again. So we would suggest that the weight of the authority on this issue and the weight of, of shear logic is, is simple.

THE COURT: Do you have a copy of the reply brief--

MR. MANGI: Yes, your Honor.

THE COURT: -- if it's handy. I have it.

MR. MANGI: I have a, a highlighted copy that I'm happy to hand up if your Honor would, would ignore the highlighting.

THE COURT: I'm colored blind. Just one point. I remember looking at it, but there was one point that I wanted to--.

All right, well, let's move on to the substantive portion of it.

MR. McGINTY: I'd like to focus now on the, the portion of the, of the request that seeks confidential

competitive business information, namely, specific reimbursement terms, and I'd like to, to I think clarify some things that, that perhaps might not have been addressed in, in the defendants' presentation. First of all, it's fair in a point to say that the defendants are entitled to, to learn about methodologies. A methodology would be to say, do you reimburse someone on a captitated basis? In other words, you give them X dollars per member. Do you reimburse them based on some Mac type schedule where you have a separate, you have price list for the drugs? Do you reimburse them on a formula that says AWP minus a stated percentage plus a dispensing fee? That's methodology, that's what they're, that's what they're, they're certainly entitled to get is methodology. What Health Net is talking about is the actual price. It matters competitively for Health Net that there is a difference, a competitive difference between them and other, other plans with whom they compete, whether it's just to, to use number randomly, whether it's AWP minus 12.5% versus AWP minus 13% or 15% or whatever. What we're saying is they can find, we can, they're entitled to find and we've given them the information which shows to them that it is in these exemplar contracts AWP, AWP minus a percent. We just don't tell them what the percentage is, and that's what we think is entitled to be protected here. It's not clear to us why that precise percentage is needed to be disclosed. What is clear is that it

is going to be a competitive disadvantage for Health Net, that, you know, Health Net believes that it does a good deal striking, good job striking competitive deals and what is a great competitive realm. In fact, the defendants in their own tutorial to this Court on these issues says these are complex negotiations between multiple entities. There's competitiveness at each level of the chain and Health Net is able to price its services to its clients because it negotiates these deals and it potentially loses that advantage if other people know what they're able to extract from the providers with whom they contract.

THE COURT: Well, there is a protective order here.

MR. McGINTY: Well, it's, the protective order is certainly there, but I think it's at best an imperfect protection, certainly one that has to get a third party stranger to this dispute. Plus, I know that at one of the tutorials, notwithstanding the existence of this protective order, it's my understanding that the reimbursement rate that Express Scripts uses to pay to CVS was actually disclosed in open court, and there's no, there's no dispute that there's a likelihood that this sort of information can come out at trial, notwithstanding the protective order. So, while the--

THE COURT: Well, that's an issue for trial down the road, that's--

MR. McGINTY: But that's, I guess the question is

that assuming that it is, it is, it is possible for the purposes of allowing the defense to mount an adequate defense to give them methodology without giving them precise pricing, why expose Health Net to the competitive risk, and, all we're saying is there needs to be an appropriate balancing here. Parenthetically, your Honor, you know, the only reason we're here is to strike this balance. There's the--

THE COURT: Well, are you proposing an alternative of what you're willing to produce?

MR. McGINTY: Well, first of all, as a, the point I think I was about to make was that with respect to the documents that that they asked for after the deposition that have not been produced, the only reason they have not been produced is that until these issues are resolved, there's no purpose in producing them, so that certainly if, if they are resolved, we'll hand them over at that point. But I think your Honor, that our argument is, is that what we've given which shows them the methodology but not the precise pricing is giving them what they need and this is an appropriate disclosure. They have the methodology. They say that's what they're entitled to. We're not sure why there should be anything more produced on that point, and I think that the Vitamins case is, is not distinguishable on the grounds that counsel presents. Yes, the posture of the case was that it was early in the case while motion to dismiss was pending, but what

was going on there is what should go on whenever there is this type of discovery dispute. It's a balance, and in that posture of the case, the court is saying the need for it at this stage is low. The risk is considerable to the producing third party, we're going to exercise our discretion to strike that balance now against the production of the documents, reserving frankly the question about what, how the balance would be struck later on in the case, but certainly the principle holds. And, I think where we come out on this is that defendants haven't offered a compelling argument why the balance should be struck here to require us to to disclose information which is going to put us--

THE COURT: It, it may not be compelling to you--

MR. McGINTY: -- at this stage.

THE COURT: -- but I'm inclined to think it's compelling to me at this point. But, anything else?

MR. McGINTY: I mean, the other, I think one other point just to address the issue about why it should be important to get the precise pricing is the notion that things are going to, you know, things change over time and, of course, contracts are set for a fixed term. And during a contract term, it's always going to be AWP minus whatever percentage it is that these contracts are not indexed. Certainly if they want to see earlier versions of contracts, we can show them that the methodology was used and maybe even tell them that,

about the magnitude of any changes in the discount that was used over time, but the precise pricing isn't going to be necessary to address that point.

THE COURT: Two minutes--

MR. MANGI: Your Honor--

THE COURT: -- on why you need the precise pricing.

MR. MANGI: Absolutely. Your Honor, the fact that AWP maybe used in some of Health Net's contracts doesn't give defendants any information that's not available in the public domain. Some insurers use AWP for some of their contracts, as does Health Net. Health Net also uses other methodologies, such as capitation in some cases. But, the key parts, and I'll try not to repeat myself, is that one can only carry out useful analysis using the actual numbers, and I'll take just one example leaving aside the four I discussed, and go back to the bundling point. These contracts are competitive bargains in the marketplace. I completely agree with my brother on that, but the only way you can assess that is by looking at the terms. If for example there's a lower amount being paid in reimbursement, there'll be a higher amount being in the dispensing fee. There'll be other terms of the contract that may come in and be relevant, the financial terms that'll modify those accounts, the expectation theory. There's no way to counter that unless you know the exact terms. If I know that they use AWP in some contracts, that doesn't tell me anything

about whether Dr. Hartman's expectation is valid or not. There's simply no way if you look at even at the tutorial, which is public. Defendants use some scatter clause showing claims data and precise reimbursement points. You can't make those points with only methodologies.

The only other point, your Honor, that I'll make briefly is in terms of the other documents. As your Honor knows, this subpoena was issued in, in November of, of 2000. These additional documents that were sought after subpoena, most of them were nothing new. They were stuff we'd asked for originally. The witness just testified about them. So I would request that if your Honor is inclined to grant these motions, your Honor also provide a specific timeframe as we requested in our proposed order so we can get all of these documents together in time for summary judgment.

Thank you, your Honor.

THE COURT: All right, I'll move on.

MR. McGINTY: I'm, I'm sorry.

THE COURT: Just seconds. Do you want a quick response or--

MR. McGINTY: Actually, one, one point which I think is not a matter of great dispute but I did at least want to, to raise here is that we had, we had raised in our papers the notion that, that some of what they're seeking with respect to claims data is very expensive to try to recover because it's

archived, and it's my understanding the defendants have conceded that they would be obligated to pay for that. We think that any order requiring the production of that data should provide the defendants will bear the reasonable cost of recovering the archived data.

MR. MANGI: Your Honor, we stated we'd pay for it before we even asked for it.

THE COURT: All right. All right, moving on to your motion. I'll--

MS. CICALA: Thank you, your Honor.

THE COURT: I'll hear the argument on both motions, take a brief recess, and then give you a ruling from the bench.

MS. CICALA: Thank you, your Honor. Just a point of clarification. Suffolk County had filed a second motion to compel against Schering-Plough. We served that on defendants on January 20th. They responded on the 25th. It was not regrettably filed with the court until yesterday. I don't know if your Honor is expecting to hear argument on that today. I am prepared to proceed if you would like. I can't speak for defense counsel on that, but I'll leave it to your Honor.

THE COURT: Well no, because I don't have it. This docket was just, the docket that I had yesterday, didn't have it on it. This docket was just printed out this morning and--

MS. CICALA: It concerns a narrow issue of, regarding production of sharing documents related to their Texas

litigation.

THE COURT: For the record, for the record it's docket entry number 1300.

MS. CICALA: Thank you.

THE COURT: Well, we'll see. I mean, if your brother is prepared to address it as well.

MR. McGINTY: Your Honor, we are prepared to address it if you'd like to hear the motion.

THE COURT: Well, then we might as well.

MS. CICALA: Thank you, your Honor. Should we do them one at a time, however?

THE COURT: Please.

MS. CICALA: Okay. The first motion filed by Suffolk concerns the form of the discovery being produced to it by Schering-Plough. And specifically, Suffolk seeks Schering's compliance with that part of CMO 10 that directs any of the parties to produce any documents available in electronic format, shall be so provided in that format. Suffolk began it's review of Schering documents in Boston a couple of months ago, and in the course of that review, confirmed that those same documents it was reviewing in hard copy were available electronically. However, Schering refused to produce them to us electronically on the basis that the liaison counsel and the MDL had negotiated with Schering that the documents would be produced in hard copy. We were not privy to those discussions

and did not elect to receive documents in hard copy. For most of these, our preference is to receive them electronically, and we would like to be able to do that.

THE COURT: Well, if they're available in hard, in electronic form, why can't they have it that way?

MR. CHRISTOFFERSON: Thank you, your Honor. I think the answer to this question lies in Case Management Order No. 9, which preceded Case Management Order No. 10. It, it is true as counsel for Suffolk has suggested, that Schering had hundreds of thousands of documents, responsive paper documents scanned into electronic format at a cost of nearly $300,000 to Schering. Case Management Order No. 9 requires liaison counsel to coordinate discovery for plaintiffs from cases that were brought by government entities, including Suffolk. Schering offered to provide those responsive documents to lead plaintiffs in electronic format if they would agree to share in the cost. The lead plaintiffs declined that offer and requested that we produce those documents in paper form, which we did. Case Management Order No. 9 also requires defendants, Schering, to make available to Suffolk those documents that were made available to the lead plaintiffs to the extent that those documents relate to drugs identified in Suffolk's complaint. Schering made available those documents to Suffolk. Suffolk has reviewed those documents and those were documents that were related to Suffolk's complaint, the drug identified

in Suffolk's complaint. Suffolk has reviewed the documents and, contrary to their assertions, under the Case Management Orders, Schering is not required to make additional and separately negotiated productions to Suffolk. Notwithstanding the reliance on Case Management Order No. 10, Case Management Order No. 10 did not supplant or revise the language regarding discovery coordination in Case Management Order No. 9. The whole point of this Case Management Order is to avoid unnecessary and duplicative discovery requests and negotiations and the associated costs. Suffolk now apparently wants to substitute themselves into the position of lead plaintiffs, but that's not a decision that either Schering or Suffolk can make. Schering has made the documents available to Suffolk. Suffolk has reviewed those documents, and nothing more is required of Schering.

THE COURT: I'm inclined to agree.

MS. CICALA: Your Honor, I, I don't, I, I'm unsure what my brother refers to when he refers to us being lead plaintiffs. I mean, Suffolk has an independent case. It's not part of the class case. It was not consulted so, first of all, I don't understand why Suffolk should be bound--

THE COURT: But I think everybody has to play by the same rules here. I mean, the idea is to keep the cost down.

MS. CICALA: Absolutely agreed, your Honor. Had Suffolk the opportunity, had liaison counsel in any way

consulted with Suffolk before making a unilateral decision with regard to how it sought to collect the sharing materials, then I would not be standing before you. But regrettably, and we have a motion that continues to be subjudice on this issues, regrettably, Suffolk was not privy, was not included in any of those discussions. Then perhaps the issue should be--

THE COURT: Well I think your issue--

MS. CICALA: -- addressed between--

THE COURT: -- is with liaison counsel.

MS. CICALA: So it would seem, your Honor. If I may say one more thing though. However, on the issue of cost and efficiency, I cannot understand how there is any excessive cost or inefficiency in Schering delivering to us electronically that which is available electronically. The, there's no, we're talking about a punch, you know, a click of a button, a copying of a CD, as opposed to copying papers and transmitting boxes which is certainly under any scenario, far less efficient.

THE COURT: Well, it sets a precedent. That's the only problem.

MS. CICALA: I'm afraid that the precedent that may be set here, however, your Honor, is that Suffolk County and my other clients, frankly, I also represent the City of New York and the counties of Rockland, Westchester, Onijaga (ph), and numerous other counties who are about to join in this litigation who have separately retained us, that each of these

important governmental entities, the City of New York, for example is one of the largest Medicaid payers in this country, shall be prejudiced by the fact that liaison counsel in this matter has not conducted itself as liaison counsel. I'm sorry to have to say this, should be conducting itself, i.e., coordinating with those parties for whom has been charged to coordinate. Now, if the issue is that I need to address that more strenuously with liaison counsel and this Court, then that will be our route.

THE COURT: All right, briefly.

MR. CHRISTOFFERSON: Your Honor, just briefly, if I, if I may. I think the bad precedent that may be set here is precedent that is, that is negative towards the defendants because Schering spent over, nearly $300,000 preparing these trial preparation materials. There's a large amount of sum cost that have gone into that process and if now simply just by asking and not following the Case Management Orders the other counties and other plaintiffs are allowed access to those documents, it is a windfall for them and a loss to Schering.

THE COURT: All right,

COUNSEL: Your Honor-

THE COURT: -- now I'll hear you on the other.

COUNSEL: -- if I could just briefly as counsel for liaison counsel just speak to what's been said. I, I do take offense to the fact the statement that liaison counsel has not

conducted themselves in a manner which is appropriate for liaison counsel to conduct themselves. At the time, I haven't been privy to all of the negotiations with respect to Schering-Plough, but when we negotiated with Schering-Plough, we did so in what we thought was the most efficient manner. There are plaintiffs who came in, you know, either during or after those negotiations took place. We were not purporting to negotiate on behalf of absent plaintiffs who come in afterwards. It's not clear to me that Suffolk even had document requests pending at the time that that negotiation was had. And let me just tell you about where we ended up with respect to Schering's documents and the reason we did what we did. Schering indicated the volume of documentation that they had available in paper. We knew from our investigation of the case and from experience that a lot of that paper was going to be useless to us, and turning that into electronic format would be even more useless. It would be a waste of time and money for all involved. So our approach to this entire thing is when they tell us we have 600 boxes available in a warehouse down in New Jersey, we send a team of lawyers to go down there and cull through that 600 boxes and pick out however many boxes, a subset of those boxes that are relevant to the case, and we had those documents copied in paper format and sent to our offices and had them distributed widely amongst the co-lead counsel who are working on our case, and analyzed and are not in one

specific format or place that are able, you know, they're sharing 600, what, what have you. That's how we've tried to cut things back. We didn't think it made sense to wholesale copy things. Believe me, I was in one of those warehouses for two to three days, and there was a lot of stuff that no one wants, and it didn't make sense to do it any other way.

THE COURT: All right. Do you want to be heard on 1300?

MS. CICALA: Yes, thank you, your Honor. Suffolk's second motion concerns a document request it served on Schering-Plough seeking production of all documents and materials, including deposition transcripts and so forth, that Schering produced to the State of Texas in its litigation with the State of Texas. Schering's objection to our request is that the production, well, initially Schering said that there were not documents in there that concerned Schering, and now they have acknowledged that there are documents within the Texas production that involved Schering or were Schering produced documents, but Schering says it would be burdensome for them to go through the Texas production to identify the Schering documents. I think I can solve that problem. I have a relationship with the Texas attorney general who's cooperating with the City of New York and the County of Suffolk and all of my other clients. They will provide us access to the documents. We will do Schering's work for it. It needn't

be bothered in the slightest with this production. Schering has produced to Suffolk here. They've acknowledged that they should be. The production has not been confined to Claritin. We have received from Schering the documents that it produced to the House Energy Committee. So they have produced a broader production here, so there can be no reasonable objection to us receiving that which they produced to Texas, particularly where we're willing to do the work, and of course include them in whatever we receive from Texas so that there's nothing inappropriate and that we don't go into warrant witnesses, so, so for example.

THE COURT: Do you need a special agreement in place to do this, or?

MS. CICALA: With Texas?

THE COURT: Yes.

MS. CICALA: To the extent we need to be singed on to the Texas protective order, the Texas AG has agreed that we, that they will facilitate that process for us. We've asked Schering to not object to our signing on to the Texas protective order. I would certainly include Schering in all my communications with the Texas AG with regard to these documents and copy them on any documents I receive from the Texas AG. This needn't burden Schering in the slightest.

THE COURT: Problem with it?

MR. CHRISTOFFERSON: Yes, your Honor. Thank you. I,

I'm not sure--

THE COURT: Too good to be true.

MR. CHRISTOFFERSON: Your Honor, I'm not sure if you'd like a copy, I brought extra copies of opposition if you'd like me to hand them up to you, or you'd rather it--

THE COURT: No, just argue it to me.

MR. CHRISTOFFERSON: Okay. Respectfully, your Honor, I think that counsel for Suffolk is missing the point here. It is true that pursuant to discovery requests in this litigation, Schering has made available to the lead plaintiffs in this case relevant documents from this Texas litigation. That entire case though concerns generic products, including products manufactured and marketed by Warrick. There were no claims in that case that Schering did anything wrong with respect to any of its drugs. The discovery produced by Schering and Warrick in that case overwhelmingly related to Warrick and Warrick products, and there was lots of discovery in that case, nearly 400,000 pages worth. Although Ropes & Gray did not represent Schering and Warrick in that action, local counsel, who has submitted a declaration in support of our opposition, informs us that there might have been some minimal amount of documents produced in that production that did not relate exclusively to Warrick or Warrick related products, and that may have had some bearing on Schering. Judge Saris, however, has issued a stay on discovery by Suffolk into claims, its claims against

Warrick. So, all the documents produced in the Texas litigation, except for some minimal amount, relate to claims into which discovery is stayed. The only remaining question would be whether these minimal needles in a giant haystack of documents are even relevant to Schering, to Suffolk's claims against Schering. We don't know the answer to that and could not know the answer to that without ourselves reviewing the entire production. The suggestion that Suffolk go and do our "work" for us, does not solve the problem, because then they would have access to lots of documents, almost 400,000 pages worth, that relate only to their claims into which discovery has been stayed. It's simply unreasonable and unduly burdensome for them to require Schering to sift through hundreds of thousands of pages of documents to find a few that may or may not be relevant to Suffolk's claims. In other words, the burden that Schering would have to bear is grossly disproportionate to the value that Suffolk would gain from some few potentially relevant documents. The discovery here violates Judge Saris' order because the claims to which it is directed, the claims against Warrick have been stayed and are not subject to discovery at this time, regardless of to whom the request might now only be made.

THE COURT: Why should I grant this with the stay in place?

MS. CICALA: The stay is against, is at to Warrick. I

absolutely agree. We don't seek any Warrick documents. We don't seek any deposition testimony from any Warrick witnesses. We seek documents produced in Texas by Schering, which exist. We seek Schering deposition transcripts, which exist. The Texas AG has those documents identified as Schering documents and those transcripts identified as Schering witnesses. I'm not looking for anything that's stamped with a Warrick bates number at this time. I'm talking about Schering documents and Schering witnesses. So, in that regard, this in no way violates Judge Saris' order. The issue devolves to burden and we can relieve them of the burden by receiving only that which is stamped Schering-Plough and only for witnesses that were produced by Schering-Plough.

MR. CHRISTOFFERSON: Your Honor, if I may respond just briefly? I think again counsel is missing the point. It, it doesn't matter to whom, you know, whether Schering as Schering produced the documents. The documents that Schering produced overwhelming related to Warrick and Warrick's products. You would have to, she would have to then figure out which of those documents were actually relevant to their claims, and according to the, the information that you received from local counsel, those documents are minimal, minimal and it would only be a handful. So whether Schering is required to go through and wade through and find a handful of documents or someone else, I guess the, the attorney general would find

documents and then, you know, send them back to Suffolk. Either way, it's going to require an amazing amount of effort that is frankly disproportionate to the value.

MR. DeMARCO: Your Honor--

THE COURT: Mr. DeMarco?

MR. DeMARCO: -- just briefly. There's another feature to this that my colleague, Mr. Muehlberger would like to discuss with respect to other defendant in this aspect of discovery.

MR. MUEHLBERGER: Your Honor, very briefly, this is the first I've heard about the, possibly the County of Suffolk signing on to the Texas Attorney General protective order. But there are witnesses in that case, for instance plaintiffs' expert in the MDL, Dr. Schondlemyer, as I understand it was also an expert witness who rendered a report and I understand also testified in deposition in the Texas AG case, which we have not been privy to and not been allowed to see because of the Texas AG order in place, and so what I simply raise, to the extent the Court is inclined to consider to allow the County of Suffolk to sign on the Texas Attorney General protective order, defendants be allowed to consider that issue and perhaps file something on the record to protect their interest and make sure everybody is on the same playing field.

THE COURT: All right. I'll take a brief recess, come back at quarter of twelve.

(Recess, reconvene 11:51:16 a.m.)

(Court called into session)

THE COURT: All right, please be seated. All right. On docket entry No. 1175, the motion is allowed subject to the enforcement of the confidentiality order. I'd like to set a deadline, so tell me what you think is a reasonable time for production.

MR. McGINTY: Your Honor, I would suggest that that deadline should be 90 to 120 days. These documents by and large are located in Sacramento. They will have to be reviewed. They will have to be vetted for privilege, and it's going to take some time to do that. In addition, many of these documents are in electronic format and, as it stands right now, I'm unaware of what, if any, systems are in place in order to access some of those documents. So we should have a significant amount of time.

THE COURT: Well, I could give you 90 days, but what about phasing it as things become available?

MR. McGINTY: Your Honor, we have no objection to that, and as a matter of fact, in the productions that have been taking place at this point, we have been producing on a rolling basis that by agreement with Mr. Mangi's office. So, I would not object to that.

THE COURT: Okay.

MR. MANGI: May I be heard, your Honor?

THE COURT: All right.

MR. MANGI: Your Honor, very briefly, there, there's separate components to this motion. First producing an un-redacted copy of what they've already produced, that takes no time. Just take off the tape, and copy it again. So we submit that should be produced within 14 days. The second component is a production of claims data.

THE COURT: Can you do that within 14 days?

MR. McGINTY: I do not know, your Honor, whether that can be done that quickly. I would suggest that the order the Court was intending to enter is probably the right one.

THE COURT: Well--

MR. McGINTY: But we will--

THE COURT: -- what I'd like to do is say 90 days, but let's set a tentative schedule for the phases. So if you could do this within four, the first 14--

MR. McGINTY: Yes, your Honor. As I, as I have, have indicated, we are willing to produce on a rolling basis, as we're able to do it. I think that the outside limit of 90 days, should, should stay in place, but I will represent to the Court and to Mr. Mangi that we will produce on a rolling basis as we are able to do that.

THE COURT: But let's see if we can set a schedule for that rolling basis.

MR. MANGI: Your Honor, if, if I may just speak to

the two other components of this? The second component is claims data. Health Net has represented to us in numerous letters that are appended to our motion they can produce claims data within six to eight weeks of start. Given that summary judgment is, is fast up and coming in this case, we would request that they be held to that schedule. And the third component of it, are these additional documents. Again your Honor, these are very specific documents. They won't be more than that high. There are no privilege issues. Most of them are just contracts. Ninety days, we would submit, is entirely unrealistic and we would submit that certainly the un-redacted production in 14 days, original--

THE COURT: All right, un-redacted production, 14 days.

MR. MANGI: The claims data within, they ask for six to eight weeks, we'll say eight weeks is fine.

THE COURT: All right.

MR. MANGI: And the additional documents--

THE COURT: So, six to eight weeks, so will give you the 60 days on that.

MR. MANGI: And these additional documents, your Honor, which is again as I mentioned, just a handful, we would suggest those could be produced within a month. I mean, the subpoena has been out there since November or 03.

THE COURT: All right, within 30 days.

MR. McGINTY: Your Honor, if I may. The representation that was previously made to Mr. Mangi's office was that it would, it would take eight weeks after we had systems in place in order to locate and access the documents. Eight weeks is two, is two months. It's 60 days essentially. I would request that the Court stand upon the original intent of 90 days because it's going to take us eight weeks after we get the systems in place and, and there's an, an unknown amount of time to get that done. I think 90 days is a much more reasonable estimate for, for producing--

THE COURT: For final completion.

MR. McGINTY: Yes, your Honor.

THE COURT: But phased in as we've said here today.

MR. MANGI: Your Honor, on claims data, we got claims data from other defendants within four days, within five days. This, this eight weeks is outlandish to begin with, but that's the maximum we can work with to be able to use this data for summary judgment.

THE COURT: Yes, I mean I had, haven't thought of the summary judgment issue since I'm not dealing with that so, I'm inclined to say 60 not 80, not 90.

MR. McGINTY: Your Honor, may I inquire because I am unaware. When is the summary judgment motion scheduled to be heard?

THE COURT: Well, to be heard, I don't know.

MR. McGINTY: When is it scheduled to be briefed?

MR. MANGI: Your Honor, I believe summary judgment is in, is in May. Is that correct?

UNIDENTIFIED: Yes.

THE COURT: Well--

MR. MANGI: Your Honor, plus on, on the other claims data--

THE COURT: You know, at the end of the 60 days, if it's not done, we'll deal with it. But let's, let's shoot for 60, rather than 90.

MR. MANGI: Your Honor, the, the only remaining issue on, there was one minor lingering issue which is that of Health Net has put these water marks on their documents. They're expressly forbidden in CMO 10. They obscure text. Judge Saris explicitly forbade them. We told them that. They still did it. We ask for clarification on that matter also. It's in our proposed order.

MR. McGINTY: Your Honor, there are water marks on the documents. I've seen every one of them. Not one of them obscures text. They are a gray background, rather than an overlay. I'm personally unaware of what Judge Saris has ordered.

THE COURT: Are these watermarks already on the documents?

MR. McGINTY: They are already on the documents that

have already been produced.

MR. MANGI: Your Honor, they're, they're highly confidential 1456, all over the page. They can just be put on the bottom right like every other document in the case.

MR. McGINTY: They, they are, they are again, your Honor, I've seen, I have personally seen each and every page of these. They, they are not all over the page. They are in the center. They are a gray background. They do not obscure any text.

THE COURT: Well, if they obscure something, then you have to produce it a second time in a non-obscure form.

MR. MANGI: Your Honor, counsel's point is that they are in grayscale. The color of grayscale varies by the photocopy. Judge Saris said put them where, outside the text.

THE COURT: You know, I don't want to deal with this. Work it out.

MR. MANGI: Your Honor--

THE COURT: Work it out. Get together. Work it out so everybody can read everything.

MR. MANGI: Thank you, your Honor.

MR. McGINTY: Your Honor, for my edification, I perhaps didn't make my notes as as completely clear as they should be. May I ask if the Court would summarize what the order, what the order is?

THE COURT: Get a copy of the transcript.

MR. McGINTY: Is there one, is there a trans--

THE COURT: Well, they'll have to be prepared.

MR. MANGI: I have good notes. I'll be happy to discuss--

THE COURT: Okay, outline how you believe--

MR. MANGI: Absolutely.

THE COURT: -- I've stated.

MR. MANGI: Your Honor, the production, the documents that have already been produced, your Honor has said that they should be produced in their un-redacted form, presumably including missing pages, within 14 days.

THE COURT: Slow, slow down so that he can take it down.

MR. McGINTY: A little slower, Adil, please.

MR. MANGI: Oh, I apologize.

THE COURT: Wait, let him get this--

MR. McGINTY: I, I got that.

THE COURT: You got that.

MR. McGINTY: But a little slower next time.

MR. MANGI: I personally wrote a big 14. The, the additional documents that are identified in our October 15, 2004 letter, which follow depositions, your Honor has ordered the production of those documents within 30 days. And the production of claims data, your Honor has ordered within 60 days.

THE COURT: Clear enough?

MR. McGINTY: Yes, your Honor, simply that that 60 days subject to reevaluation depending on what the technical issues are.

THE COURT: I'll listen to you. You know, you get to that point, you file a motion, I'll hear you.

MR. McGINTY: Okay.

THE COURT: But, you know, always try and talk with each other and see if you can try and work things out, and, you know, as to the watermarks, see if you can work this issue out. I mean this is--

MR. McGINTY: We, we do speak to each other, your Honor, regularly. I'm sure that as reasonable people, we can resolve that.

THE COURT: All right, as to docket entry No. 1189, the motion is denied. I'm afraid you are bound by what liaison counsel has done in the past, and I think you have to talk to liaison counsel and make that clear.

As to 1300, it's denied without prejudice at this time, having heard from Mr. DeMarco's co-counsel. I'll give everybody else 14 days to weigh in on this if they want to file anything.

MS. CICALA: Thank you, your Honor.

THE COURT: All right, and then when you, when we get everything, we can set up another hearing date

MS. CICALA: Thank you.

MR. CHRISTOFFERSON: Your Honor, just a quick point of clarification, are you inviting further submissions by, by Schering & Suffolk or just, you know, other defendants?

THE COURT: Well, you've, did, I mean, did you really get much of chance to respond?

MR. CHRISTOFFERSON: We, we did file--

THE COURT: You're satisfied. I mean--

MR. CHRISTOFFERSON: Okay. Thank you, your Honor.

THE COURT: If anybody else wants to respond, only because it was just yesterday. Okay.

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CERTIFICATION

I, Maryann V. Young, court approved transcriber, certify that the foregoing is a correct transcript from the official digital sound recording of the proceedings in the above-entitled matter.

March 6, 2005

Maryann V. Young